

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES-26367.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

A protest of an oil and gas lease offer executed by an attorney-in-fact is properly rejected where the copy of the agreement between the offeror and the attorney-in-fact authorizing the latter to act for the offeror has been filed as required by 43 CFR 3102.2-6 (1981) and referenced on the lease offer as permitted by 43 CFR 3102.2-1(c) (1981).

APPEARANCES: Leon F. Scully, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Leon F. Scully, Jr., appeals from the October 27, 1982, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting his oil and gas lease offer, ES-26367. Appellant filed his noncompetitive oil and gas lease offer over the counter on January 7, 1981. The offer was subsequently rejected by decision of BLM on the ground that the lands applied for were subject to an outstanding lease, ES-24719, issued to Atlantic Richfield Company (Atlantic Richfield) effective June 1, 1982. The record shows that Atlantic richfield submitted its offer for the lands on June 23, 1980.

Appellant alleges, in essence, that he is the first-qualified applicant for lease of the tract, and, therefore, seeks cancellation of Atlantic Richfield's lease and issuance of the lease to himself. Appellant points out that the conflicting lease offer of Atlantic Richfield was signed by a person acting as attorney-in-fact for Atlantic Richfield and argues that this was in violation of the regulations at 43 CFR Subpart 3102 (1982). ^{1/} Appellant contends that the May 23, 1980, regulatory revisions deleted authority for

^{1/} On May 23, 1980, the Department published final rules (45 FR 35156-66), effective June 16, 1980, amending various provisions of the oil and gas

attorneys-in-fact to sign over-the-counter offers for noncompetitive oil and gas leases.

This same argument has previously been considered by this Board in a related case arising from similar circumstances. Leon F. Scully, Jr., 72 IBLA 96 (1983). As we stated in that decision:

[1] The regulatory revisions of May 23, 1980, simply do not support the sweeping interpretation drawn by appellant that over-the-counter lease offers may not be executed by an attorney-in-fact on behalf of the offeror. An attorney-in-fact is an agent. See Black's Law Dictionary 164 (rev. 4th ed. 1968). The regulation at 43 CFR 3102.2-6 (1981) provides that any applicant receiving the assistance of any person in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the offer a signed copy of any written agreement under which such service is authorized to be performed. The regulation expressly notes that such an agreement might take the form of a "power of attorney." Further, the wording of the regulation requiring such filing "with the lease offer, or the lease application if leasing is in accordance with subpart 3112" (emphasis added) makes it clear that the agency requirement extends to over-the-counter lease offers. The record discloses that copies of the power of attorney for Atlantic Richfield's attorneys-in-fact were on file in the corporate qualifications file which was referenced on the lease offers as permitted by 43 CFR 3102.2-1(c) (1981).

The conflicting offers filed by appellant and Atlantic Richfield are regular (over-the-counter) offers for noncompetitive leases subject to the requirements of 43 CFR Subpart 3111 (1981). Subsection 3111.1-1 requires that each such offer "must be * * * signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent." (Emphasis added.) This plain language permitting an attorney-in-fact to sign a regular offer for a noncompetitive lease further rebuts appellant's contention that the Department's rulemaking action of May 23, 1980, precluded the use of an attorney-in-fact to sign regular offers for noncompetitive leases.

Leon F. Scully, Jr., supra at 98 (footnote omitted).

fn. 1 (continued)

leasing regulations of 43 CFR Part 3100, with particular emphasis on the provisions of the simultaneous oil and gas leasing system. These revised regulations have subsequently been further revised effective Feb. 26, 1982, and the regulation governing qualification of an agent at 43 CFR 3102.2-6 (1981) eliminated. See 47 FR 8544-46 (Feb. 26, 1982). The existence of conflicting applications filed at the time the former regulations were in effect necessitates a determination of the first-qualified applicant under the now-superseded regulations.

Accordingly, appellant's ground for challenge of Atlantic Richfield's lease fails and appellant's subsequently filed lease offer for the same tract was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

